Supreme Court, U.S.
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No. 99-1041

IN THE SUPREME COURT OF THE UNITED STATES

BILL PRYOR, in his official capacity as Attorney General for the State of Alabama and his agents and successors; and ELLEN BROOKS, in her official capacity as Montgomery District Attorney

Petitioners,

-v-

SUMMIT MEDICAL ASSOCIATES, P.C.; BEACON WOMEN'S CENTER; NEW WOMAN, ALL WOMEN HEALTH CARE; and WILLIAM H. KNORR, M.D., on behalf of themselves and their patients' seeking abortions;

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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Petitioners, Bill Pryor, Attorney General for the State of Alabama, and Ellen Brooks, Montgomery District Attorney, submit the following brief as their reply to the brief in opposition to the petition for writ of certiorari submitted by respondents Summit Medical Associates, P.C., Beacon Women's Center, New Woman, All Women Health Care, and William H. Knorr, M.D.

I. RESPONDENTS' ARGUMENT UNDERMINES THE PARAMOUNT OBLIGATION TO EXAMINE ARTICLE III JURISDICTION IN ALL CASES

This petition is grounded on the Eleventh Circuit's departure from what this Court has called "perhaps the most important of [the jurisdictional] doctrines." Allen v. Wright, 468 U.S. 737, 751 (1984). That this departure reflects a broad based misapprehension among both courts and practitioners of the inflexible obligation of every federal court in every case to examine its own jurisdiction is evident from the decision below, from the cases cited in the petitioners' original brief, and from respondents' brief. This Court should intervene and underscore the basic and straightforward nature of this error by means of a summary reversal of the decision below.

The respondents take the radically incorrect position that federal courts of appeals do not have an obligation — and in fact are positively forbidden — to independently examine their own Article III jurisdiction in a collateral order appeal. Respondents' Brief in Opposition, p. 6. This position, of course, flatly contradicts this Court's well established precedents to the contrary, all of which stand for the proposition that a court's obligation in this regard attaches in every federal court proceeding and at every stage. See, e.g., Bender v. Williamsport Area School Dist., 475 U.S. 534, 541, 547 (1986) (and cases cited therein). The principle is so basic in fact that this Court has on more than one occasion simply assumed its applicability. United States Catholic Conference v. Abortion Rights Mobilization, Inc., 487 U.S.

(1988); City of Los Angeles v. Lyons, 461 U.S. 95 (1983).

Respondents herein acknowledge that inquiry into a plaintiff's standing is "common in interlocutory appeals specifically authorized by Congress under 28 U.S.C. § 1292." Respondents' Brief in Opposition, p. 6. They fail to explain, however, why a different standard should apply to collateral order appeals, which likewise rest upon a statutory basis. Respondents rely instead upon a misreading of Swint v. Chambers County Comm'n, 514 U.S. 35, 42 (1995).

Whatever else Swint stands for, the case provides no basis whatsoever for concluding that this Court's unbroken line of pronouncements both pre- and post- Swint, regarding the obligation to examine Article III standing in every case, is to be disregarded in cases involving interlocutory appeals of Eleventh Amendment immunity rulings.

It would be anomalous for the jurisdiction of an appeals court to include the kind of pendent issues that have been deemed subject to review as part of the review of a collateral order, yet not to include whether a "case or controversy" exists under Article III. As this Court said in Swint, it has never been expected that "courts of appeals confine review to the precise decision independently subject to appeal." Swint, 514 U.S. at 50. In fact, the cases cited by this Court in Swint as examples of the kinds of issues which have been deemed properly subject to review on interlocutory appeal demonstrate the fallacy of respondents' position. Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747, 755-757 (1986) (Court of Appeals reviewing District Court's ruling on preliminary injunction request properly reviewed merits as well); Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 172-173 (1974) (Court of Appeals reviewing District Court's order allocating costs of class notification also had jurisdiction to review ruling on methods of notification); Chicago, R.I. & P.R. Co. v. Stude, 346 U.S. 574, 578 (1954) (Court of Appeals reviewing order granting motion to dismiss properly reviewed order denying opposing

party's motion to remand); Deckert v. Independent Shares Corp., 311 U.S. 282, 287 (1940) (Court of Appeals reviewing order granting preliminary injunction also had jurisdiction to review order denying motions to dismiss); Schlagenhauf v. Holder, 379 U.S. 104, 110-11 (1964) (Court of Appeals exercising mandamus power should have reviewed not only whether District Court had authority to order mental and physical examinations of defendant in personal injury case, but also whether there was good cause for the ordered examinations).

This Court's unbroken line of precedents regarding the fundamental, inflexible obligation of federal courts to examine their own jurisdiction has not been modified in the slightest by Swint or any other case. The doctrine remains what it has always been — "perhaps the most important of [the jurisdictional] doctrines." Allen, 486 U.S. at 751. That the Eleventh Circuit disregarded this fundamental prerequisite to its consideration of this case, and did so based primarily on a misreading of Swint, underscores the need for this Court to intervene.

II. A TRUE CONFLICT EXISTS BETWEEN THE DECISION BELOW AND A DECISION OF THE FIFTH CIRCUIT.

Respondents agree that there is a conflict between the decision below and the Fifth Circuit's decision in United States v. Texas Tech University, 171 F.3d 279 (5th Cir. 1999); they argue, however, that the conflict is "illusory" and "a conflict only with dicta." Respondents' Brief in Opposition, p. 8. Respondents further argue that a "true conflict" would be presented if a court of appeals, in a collateral order appeal of an Eleventh Amendment immunity ruling, dismissed a plaintiff's claims for lack of standing "under the belief that it had an independent obligation to assess the plaintiff's standing even if the plaintiff's standing was not 'inextricably intertwined' with the Eleventh Amendment issue." Respondents' Brief in Opposition, p. 8, n.4.

Both of these arguments are without merit. Both arguments amply illustrate the respondents' complete failure to grasp the basic issue involved. To the extent that the respondents' lack of understanding reflects that of the court below, it underscores the need for this Court's intervention.

The Fifth Circuit's consideration of the standing issue in Texas Tech University is hardly "dicta." On the contrary, the Court raised the question sua sponte in recognition of its obligation to do so. U.S. v. Texas Tech University, 171 F.3d at 288, n.12. The Court was mindful, even if the parties were not, that it had a threshold obligation to determine standing. Its holding on that issue, far from being mere obiter dicta, is actually a sine qua non of its decision. Cf. Seminole Tribe of Florida v. Florida, 517 U.S. 44, 66 (1996) ("When an opinion issues for the Court, it is not only the result but also those portions of the opinion necessary to that result by which we are bound").

Respondents' hypothetical case in which a plaintiff's standing would not be inextricably intertwined with the Eleventh Amendment immunity issue is an impossibility. The whole point and burden of this Court's pronouncements on this issue has been that a plaintiff's standing is always inextricably intertwined with every issue in every case. There is no known exception to this inflexible rule for Eleventh Amendment immunity questions brought before the Court in collateral order appeals.

In fact, this Court's recent Order in Pending Case in the matter of Vermont Agency of Natural Resources v. U.S., ex rel. Stevens, 1999 WL 1045146 (U.S.), to be reported at 120 S Ct. 523 , is but the latest indication of the paramount nature of the obligation to examine standing at every stage of a proceeding. Like the present case, Vermont Agency is a collateral order appeal arising out of a district court's denial of defendant's motion to dismiss on the ground of Eleventh Amendment immunity. United States, ex. rel. Stevens v. Vermont Agency Resources, 162 F.3d 195 (2d Cir. 1998). This

Court's directive to the parties to file supplemental briefs addressing the question: "Does a private person have standing under Article III to litigate claims of fraud upon the government?" does little to bolster respondents' position that the issue of standing is not before a court of appeals in a collateral order appeal of an Eleventh Amendment immunity ruling.

CONCLUSION

The Eleventh Circuit's decision in this case amounts to a "demonstrably erroneous application of federal law." Maryland v. Dyson, 527 U.S. 465, 119 S. Ct. 2013, 2014 (1999). This Court should grant the petition and summarily reverse.

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